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NO FEE PETITION UNDER 37 CFR 1.181 AND 1.144
EXPEDITED PROCEDURES EXAMINING
GROUP

PATENT
0630-1029P

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant: Sun H. YANG et al. Conf. No.: 1895

Appl. No.: 09/474,121 Group: 3652

Filed: December 29, 1999 Examiner: T. Tran

For: ELEVATOR SYSTEM WITHOUT MACHINE ROOM

May 3, 2004

PETITION UNDER 37 C.F.R. § 1.181 AND §1.144

MS AF

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

No Fee Status

Initially, Applicants respectfully submit that, because this petition is filed procedurally under 37 CFR 1.181, no fee is due.

Petition

Applicants respectfully petition the Examiner's decision in the Office Action dated January 6, 2004 withdrawing claims 41-43 from consideration because the Office Action asserts that neither of these two claims is readable on the elected species of Figs. 12-17.

In particular, Applicants petition to withdraw the June 6, 2004 Office Action, enter the Amendment filed on May 3, 2004, and to receive an Office Action on the merits of claims 32-37, 39-41, 46, 48 and 52-57.

Initially, Applicants note that the Examiner's decision is based on a conclusion that is unsupported by any evidence or reasoning and, as such denies Applicants fundamental procedural and substantive due process which the Office is supposed to accord Applicants via the Administrative Procedures Act. See in this regard, *In re Zurko*, 119 S.Ct. 1816, 50 USPQ2d 1930 (1999), and *In re Gartside*, 53 USPQ2d 1769 (Fed. Cir. 2000).

Under the circumstances, the final withdrawal of claim 41 from consideration was improper. Moreover, the finality of this arbitrary and capricious action was requested to be withdrawn in the Amendment under 37 CFR §1.116 filed on May 3, 2004.

On June 29, 2004, Applicants' undersigned representative contacted Examiner Tran and was informed that Examiner Tran had prepared and intended to mail, after Supervisory approval, an Advisory Action adhering to the aforementioned decision.

As of this date, Applicants undersigned representative has not received the Advisory Action.

In the Amendment filed on May 3, 2004, Applicants traversed the aforementioned decision by asserting that claim 41 clearly reads on the species of Figs. 12-17, explaining that claim 41 recites that the fixing portion is a fixing

member fixed at an inner wall surface of the hoistway. This feature reads on element 1c shown in Fig. 12, for example, and is described, for example, on page 20, lines 15-19.

Applicants agree that claim 43 does not read on the elected species of Figs. 12-17.

Claim 41 depends directly from claim 39 and indirectly from claim 32, which claims are reproduced below:

32. (Previously Presented) An elevator system without a machine room, comprising:

a hoistway having a pair of elevator car guide rails and a pair of counterweight guide rails, the counterweight guide rails being shorter than the elevator guide rails;

an elevator car movable up and down along the elevator car guide rails;

a counterweight movable up and down along the counterweight guide rails;

roping means for suspending said elevator car and said counterweight; and

a winding apparatus engaged with said roping means for moving said roping means for thereby moving said elevator car;

wherein said winding apparatus is installed on an installation member fixed on upper portions of the counterweight guide rails at a position lower than an upper portion of said elevator car when said elevator car is positioned at a

highest floor of said hoistway.

39. (Previously Presented) The elevator system of claim 32, wherein one end of said roping means is fixed at a fixing portion formed at an upper portion of the hoistway, and the other end of said roping means is fixed at an upper portion of the counterweight.

41. (Previously Presented) The elevator system of claim 39, wherein said fixing portion is a fixing member fixed at an inner wall surface of the hoistway.

Applicants note that claims 32 and 39 have been determined by the Examiner to read on the elected species and have been treated on their merits in the January 6, 2004 Office Action.

Applicants also submit that this petition is timely because it is being submitted not later than the taking of an appeal, a Notice of Appeal being filed on even date herewith, and that it is ripe for consideration inasmuch as this issue was raised in the May 3, 2004 Amendment filed in response to the January 6, 2004 Office Action which contains the complained of decision.

Relief Sought

Applicants request that (1) the June 6, 2004 Office Action be withdrawn; (2) the May 3, 2004 Amendment be entered in its entirety based on the fact that it was filed prior to a proper final rejection being mailed and which was subsequently withdrawn; (3) a new Office Action be prepared and mailed with respect to the merits of all claims that read on the elected Species of Figs. 12-17, i.e., claims 32-37, 39-41, 44, 46, 48 and 52-57 and which fully treats the

arguments presented in the May 3, 2004 Amendment; and (4) the Advisory Action indicated by the Examiner on June 29, 2004 to be forthcoming be withdrawn to the extent that it is inconsistent with the relief sought herein.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone Robert J. Webster, Registration No. 46,472, at (703) 205-8000, in the Washington, D.C. area.

Prompt and favorable consideration of this Petition is respectfully requested.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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